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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MICKAIL MYLES, an individual,

12 Plaintiff,

13 v.

14 COUNTY OF SAN DIEGO, by and
15 through the SAN DIEGO COUNTY
16 SHERIFF'S DEPARTMENT, a public
entity; and DEPUTY J. BANKS, an
individual,

17 Defendants.
18

Case No. 15-cv-01985-JAH-BLM

**ORDER DENYING DEFENDANTS'
MOTION FOR A NEW TRIAL AND
DENYING MOTION FOR
JUDGMENT AS A MATTER OF
LAW [Doc. Nos. 447, 448]**

19 Pending before the Court are Defendants' motion for a new trial and
20 Defendants' motion for judgment as a matter of law. Plaintiff filed oppositions to the
21 motions and Defendants filed replies. After a thorough review of the parties'
22 submissions and for the reasons discussed below, the Court DENIES Defendants'
23 motions.

24 **I. Legal Standards**

25 Pursuant to Rule 50 of the Federal Rules of Civil Procedure, a party may renew
26 a motion for judgment as a matter of law and "may include an alternative or joint
27 request for a new trial under Rule 59." FED.R.CIV.P. 50(b). "In ruling on the renewed
28 motion, the court may: (1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or (3) direct the entry of judgment as a matter of law.” *Id.* Judgment as a matter of law is appropriate when “a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” FED.R.CIV.P. 50(a)(1). However, if substantial evidence supports the jury’s findings, the verdict should be upheld “even if it is also possible to draw a contrary conclusion.” *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002). In entertaining a motion for judgment as a matter of law, a court should review the evidence and “must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000).

A court may grant “a new trial on all or some of the issues--and to any party--after a jury trial for any reason for which a new trial has heretofore been granted in an action at law in federal court.” FED. R. CIV. P. 59(a)(1)(A). Because Rule 59 does not instruct on the grounds upon which a motion for a new trial may be granted, the Court must look to the grounds historically recognized by the courts, including (1) the verdict is contrary to the clear weight of the evidence and (2) the trial was unfair for some other reason. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007); *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1035 (9th Cir. (200)); *Roy v. Volkswagen of America*, 896 F.2d 1174, 1176 (9th Cir. 1990).

II. DISCUSSION

Defendants argue the jury’s findings on Plaintiff’s claims are not supported as a matter of law and the award of damages was excessive. They also argue the clear weight of the evidence is against the jury’s findings and, therefore, the Court should, at least, grant them a new trial.

A. Jury’s Findings on Plaintiff’s Claims

1. Excessive Force by Defendant Banks

Defendants argue the evidence demonstrates Defendant Banks acted

1 objectively reasonably under the totality of the circumstances based on the
2 information known to him at the time of his actions, and therefore, insufficient
3 evidence exists to support the jury's contrary findings. Even if the Court determines
4 substantial evidence supports the jury's findings, Defendants argue, they are entitled
5 to qualified immunity because Plaintiff failed to demonstrate a violation of a
6 constitutional right and that the constitutional right was clearly established at the time
7 of Defendants' actions.

8 Defendants point to no evidence from the trial in support of their argument that
9 Defendant Banks acted reasonably under the circumstances. A review of the record
10 demonstrates evidence during trial, including the testimony of Plaintiff, other eye-
11 witness testimony and expert testimony, supports the jury's finding that Deputy
12 Banks' use of force was unreasonable under the circumstances.

13 Defendants argue, even if the Court finds substantial evidence exists, they are
14 entitled to qualified immunity. Under the doctrine of qualified immunity, officials
15 are protected from civil liability "so long as their conduct 'does not violate clearly
16 established statutory or constitutional rights of which a reasonable person would have
17 known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555
18 U.S. 223, 231 (2009)). The qualified immunity analysis is a two-prong test that
19 requires the Court to determine 1) whether the plaintiff's alleged facts establish a
20 violation of a constitutional right, and 2) whether that right was clearly established at
21 the time of the defendant's alleged misconduct. *Frudden v. Pilling*, 877 F.3d 821,
22 831 (9th Cir. 2017) (citing *Pearson*, 555 U.S. at 232). Both prongs must be satisfied
23 to overcome a qualified immunity defense. *Shafer v. County of Santa Barbara*, 868
24 F.3d 1110, 1115 (9th Cir. 2017). As discussed above the evidence demonstrates a
25 constitutional violation occurred, and as previously found in this case, the right was
26 clearly established at the time of Defendant Banks' conduct. Accordingly,
27 Defendants are not entitled to qualified immunity.

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1 **2. Monell Claims**

2 Defendants also argue they are entitled to judgment as to the *Monell* failure to
3 train and ratification claims because facts demonstrate no constitutional violation
4 occurred and without a predicate violation, there can be no *Monell* violation. As
5 discussed above, the evidence supports a constitutional violation.

6 Even if the Court finds a constitutional violation was shown, Defendants argue
7 Plaintiff presented insufficient evidence to demonstrate an unconstitutional pattern
8 and practice which would give rise to liability under *Monell*, and no evidence of
9 improper training or ratification. Plaintiff contends the evidence and reasonable
10 inferences therefrom support the jury's finding that the County either ratified
11 Defendant Banks' use of excessive force or had a policy or custom of permitting use
12 of force.

13 Plaintiff may establish liability against the County if he proved either
14 Defendant Banks committed the constitutional violation pursuant to a longstanding
15 practice or custom which constitutes the standard operating procedure of the local
16 government entity or (3) an official with final policy-making authority ratified
17 Defendant Banks' unconstitutional action. *Hopper v. City of Pasco*, 241 F.3d 1067,
18 1083 (9th Cir. 2001). "The custom must be so 'persistent and widespread' that it
19 constitutes a 'permanent and well settled city policy'" and founded upon practices of
20 sufficient duration, frequency and consistency that the conduct has become a
21 traditional method of carrying out policy. *Trevino v. Gates*, 99 F.3d 911, 918 (9th
22 Cir. 1996) (quoting *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658,
23 691 (1978)). The custom or practice must be the moving force behind the
24 constitutional violation. *Id.* at 694.

25 The jury heard testimony regarding the numerous incidents involving use of
26 force by Defendant Banks, that many of the incidents were not investigated or that
27 cursory investigations were conducted. Additionally, expert testimony explained that
28 the failure to provide proper training on use of force and not properly investigating

1 uses of force sends a message that the use of excessive force is acceptable. Drawing
2 all reasonable inferences in favor of Plaintiff, the Court finds there is sufficient
3 evidence to support the jury's determination the County is liable under *Monell*.
4 Furthermore, the verdict is not contrary to the clear weight of the evidence.

5 **3. Negligence and Comparative Fault**

6 Defendants contend the jury's determination that Defendants were negligent
7 and Plaintiff bore zero responsibility is inconsistent with the evidence presented at
8 trial. They maintain there was no conduct on the part of Defendants that made the
9 use of force unreasonable and, therefore, they cannot be negligent as a matter of law.
10 Defendants also argue, Plaintiff bore some responsibility by failing to promptly
11 comply with Defendants' lawful orders and instructions.

12 Plaintiff argues the evidence that establishes the use of force was excessive
13 necessarily demonstrates Defendant Banks' action constituted an act of negligence.
14 He also argues in addition to evidence demonstrating the force was excessive, there
15 was evidence that Plaintiff was fully in the custody and control of the law enforcement
16 officers when the force was used.

17 As discussed above there was sufficient evidence at trial to support the jury's
18 finding that the force used against Plaintiff was unreasonable. Moreover, Plaintiff
19 testified that he was unable to hear the commands while the dog was barking and that
20 the commands were coming from multiple officers and those he heard were
21 conflicting. Additionally, there was testimony that Plaintiff was being held by the
22 officers when Defendant Banks punched him in head and he was bitten. The Court
23 finds there is sufficient evidence supporting the jury's finding that Plaintiff bore no
24 fault for his injuries. In addition, the finding is not contrary to the weight of the
25 evidence.

26 **B. Jury Award**

27 Defendants argue the award of \$5,000,000 is untethered to reality, unsupported
28 by substantial evidence and a result of passion and prejudice, and warrants a new trial

1 or, at a minimum, remittitur. Defendants maintain the evidence does not support the
2 jury's finding that Plaintiff suffered \$800,000 in past non-economic damages or that
3 he will experience an additional \$4,200,000 in non-economic damages and the
4 amount awarded demonstrates the jury acted out of passion, prejudice, and an intent
5 to punish. In support, Defendants point to Plaintiff's medical records which
6 demonstrate Plaintiff suffered an atraumatic head injury and three lacerations on his
7 chest, that he experienced no loss of consciousness and Dr. Dean Delis, medical
8 expert, opined that Plaintiff suffered, at most, a Grade 1 concussion. Additionally,
9 they contend Plaintiff himself testified that he refused medical assistance, he did not
10 report any head trauma when he was first examined and he has not felt any physical
11 pain in years. They further contend Plaintiff had only a single appointment for
12 psychiatric treatment and made no attempt to mitigate any psychological injuries.

13 Plaintiff argues Defendants ignore evidence detailing the trauma, humiliation,
14 and anxiety he endured as a result of the event. He points to his testimony regarding
15 the details of the encounter and how he was placed in the patrol car by Defendant
16 Banks who told Plaintiff the incident would not have happened had Plaintiff not been
17 a "retard" and listened to Banks' orders and that the physician stated "look what the
18 dog drug in" when he arrived at the hospital. He also maintains he testified that his
19 scar is a constant reminder of the event and that he fears for his sons and that he is
20 unable to protect them from similar harm. Plaintiff also discusses the testimony of
21 his family members regarding his behavior after the incident which included
22 testimony that he withdrew and did not participate in family events. Additionally,
23 Plaintiff contends Dr. Monte Buchsbaum testified that Plaintiff suffered from
24 traumatic brain injury, PTSD, depression and anxiety and opined that Plaintiff will
25 suffer from depression, anxiety and PTSD for the rest of his life. Plaintiff argues the
26 jury was properly instructed to base its verdict on the evidence and law presented and
27 not be influenced by sympathy, prejudice, public opinion or biases.

28 A jury's determination on damages is afforded substantial deference and should

1 be upheld unless it is “grossly excessive or monstrous, clearly not supported by the
 2 evidence, or based only on speculation or guesswork.” *Del Monte Dunes at Monterey,*
 3 *Ltd. v. City of Monterey*, 95 F.3d 1422, 1435 (9th Cir. 1996); *see also Harper v. City*
 4 *of Los Angeles*, 533 F.3d 1010, 1028 (9th Cir. 2008). “Compensatory damages may
 5 be awarded for humiliation and emotional distress established by testimony or
 6 inferred from the circumstances, whether or not plaintiffs submit evidence of
 7 economic loss or mental or physical symptoms.” *Tortu v. Las Vegas Metro. Police*
 8 *Dep’t*, 556 F.3d 1075, 1086 (9th Cir. 2009) (quoting *Johnson v. Hale*, 13 F.3d 1351,
 9 1352 (9th Cir.1994)). Emotional damages awards need not be supported by objective
 10 evidence and may be based solely on testimony. *Passantino v. Johnson & Johnson*
 11 *Consumer Products, Inc.*, 212 F.3d 493, 513 (9th Cir. 2000).

12 The jury found Defendant Banks used unreasonable force against Plaintiff.
 13 Expert testimony and other evidence at trial demonstrated the extent of physical,
 14 mental and emotional trauma Plaintiff suffered as a result of the unreasonable force,
 15 including traumatic brain injury, PTSD, depression and anxiety. *See* TR 1888-93,
 16 1903-07; 2178-85, 2187-90, 2213-2214, 2216, 2225-26, 2228-29; 2618-24, 2628-35,
 17 2641-1259, 2661-66, 2671, 2673, 2679. Additionally, Plaintiff, his wife, brother and
 18 father all testified about the fear and anxiety Plaintiff demonstrated after the incident
 19 when he encountered police and the detrimental effect on Plaintiff’s interactions with
 20 his family members including his children and specifically feeling powerless to
 21 protect his children from similar harm. TR 1101, 1108-14; 1212-14, 1219, 1237-42,
 22 1244-45; 2460-65, 2467, 2470-75; 4070-71, 4076-80, 4082-87, 4090-93, 4099-4105,
 23 4107-16, 4119-24. Plaintiff’s father also testified regarding Plaintiff’s anxiety and
 24 belief he was under surveillance while at home and Plaintiff also testified that his fear
 25 the police were following him was heightened when he learned Defendants surveilled
 26 him during the pendency of the action. TR 1238, 4107-10.

27 The Court finds there was significant evidence presented at trial of Plaintiff’s
 28 mental and emotional trauma in addition to the evidence of the physical trauma he

1 suffered as a result of Defendants' conduct. The evidence and testimony sufficiently
2 demonstrates the jury award was not based upon speculation or guesswork or a result
3 of passion or prejudice. The Court further finds the amount is not so grossly excessive
4 as to warrant a new trial or be reduced by way of remittitur. Accordingly, Defendants'
5 motion is DENIED.

6 **C. Revival of the *Monell* Claim**

7 Defendants argue this Court's revival of Plaintiff's claim under *Monell* without
8 providing Defendants an opportunity to prepare, imposing expert sanctions and
9 denying their motion to bifurcate deprived them of due process and warrants a new
10 trial. Defendants argue reinstatement of the *Monell* claim and related orders changed
11 the course of the trial and denied Defendant a meaningful opportunity to address the
12 reinstated claim. "Sanctions interfering with a litigant's claim or defenses violate due
13 process when imposed merely for punishment of an infraction that did not threaten to
14 interfere with the rightful decision of the case." *Wyle v. R.J. Reynolds Indus., Inc.*,
15 709 F.2d 585, 591 (9th Cir. 1983) (citing *G-K Properties v. Redevelopment Agency*,
16 577 F.2d 645, 648 (9th Cir.1978)).

17 This Court reinstated the *Monell* claim and made other related orders including
18 prohibiting Defendant from rebutting any supplemental report prepared by Plaintiff's
19 expert as a sanction for Defendants' failure to propound requested discovery and
20 failure to provide accurate privilege logs pursuant to Federal Rule of Civil Procedure
21 37(b). The Court found Defendant's conduct interfered with Plaintiff's ability to
22 prove his claims. Specifically, Defendants' discovery abuses significantly impaired
23 Plaintiff's efforts to adequately defend against Defendants' dispositive motions and
24 to prepare for trial resulting in substantial prejudice to Plaintiff, including dismissal
25 of the *Monell* claim and an inability to timely locate relevant evidence. As such, the
26 reinstatement of the *Monell* claim and related orders was directly related to
27 Defendants' improper conduct.

28 This Court considered and rejected Plaintiff's requested sanctions of a directed

1 verdict against the County of San Diego upon finding the less drastic sanctions
2 appropriate. Additionally, the Court, after reconsidering, continued the trial date over
3 Plaintiff's objection to permit the Defendants an opportunity to prepare its defense
4 against the *Monell* claim.

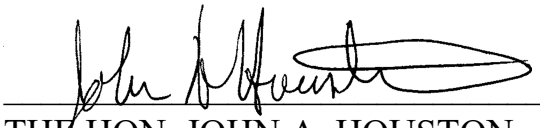
5 This Court's issuance of sanctions did not deprive Defendants' due process and,
6 therefore, a new trial is not warranted.

7 **CONCLUSION AND ORDER**

8 Based on the foregoing, IT IS HEREBY ORDERED:

- 9 1. Defendants' motion for judgment is **DENIED**;
- 10 2. Defendants' motion for a new trial is **DENIED**;
- 11 3. Defendants shall file a response to the motion for attorney fees and costs
12 **on or before May 15, 2023**;
- 13 4. Plaintiff may file a reply in support of his motion **on or before May 24,**
14 **2023**;
- 15 5. *The motion will be deemed under submission at that time unless*
16 *otherwise ordered by the Court.*

17 DATED: May 4, 2023

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20 THE HON. JOHN A. HOUSTON
21 UNITED STATES DISTRICT JUDGE
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